REPORTABLE

IN THE HIGH COURT OF MANIPUR AT IMPHAL

WP(C)No.386 of 2022

Y. Munindro Mangang, aged about 55 years, s/o Y.Amuba Mangang, Resident of Kwakeithel Thokchom Leikai, PO & PS Imphal, District Imphal West, Manipur 795001

...Petitioner

- Versus -

- The State of Manipur, through the Chief Secretary/Commissioner/Secretary (Works) Govt of Manipur, New Secretariat Building, Babupara, PO & PS Imphal, District Imphal West, Manipur 795001.
- 2. The Department of Personnel & Administrative Reforms through the Commissioner/Secretary (DP), Govt of Manipur, New Secretariat Building, Babupara, PO & PS Imphal, District Imphal West, Manipur 795001.
- 3. The Chief Engineer, Public Works Department, Khoyathong, Thangal Bazar, PO & PS Imphal, District Imphal West, Manipur 795001.
- 4. The Manipur Public Service Commission through its Secretary, North AOC, PO & PS Imphal, District Imphal West, Manipur 795001.
- 5. Chongtham Bishwachandra Singh.
- 6. Dr. Ngangom Senior
- 7. Rubee Kongbrailatpam.
- 8. Chabungbam Uttam Singh
- 9. K. Lokho
- 10. Ajmida Sahani
- 11. Yumnam Robin

- 12. Shongzami Khapudang
- 13. Kh. Ibopishak Singh.
- 14. Indrakumar Singh.
- 15. Y. Anilkumar Singh
- 16. L. Arun Kumar Meitei
- 17. N. Sadananda Singh
- 18. K. Deben Singh.
- 19. H. Bhogindro Singh
- 20. N. Santabir Singh
- 21. T. Joseph Khenkhanmang
- 22. Md. Rahimuddin
- 23. W. Robertson Anal.
- 24. N. Amuba Singh.
- 25. M. Inaobi Singh.
- 26. Th. Ratan Meitei.
- 27. Ch. Hareshwor Singh.
- 28. K. Norjit Sharma.
- 29. K. Thangkhomanng Gangte
- 30. Th. Brajakishore Singh
- 31. Th. Komol Singh
- 32. S. Prakash Singh
- 33. Y. Ajit Kumar singh.
- 34. R.K. Lansana Singh
- 35. R. Chungailungpou
- 36. N. Rabi Singh
- 37. N. Imocha Singh
- 38. M. Thangpei.
- 39. N. Jamandar Singh
- 40. Leivon Neilenthang Kom
- 41. Joyson Raleng

.... Respondents

BEFORE HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners : Mr. Anjan Prasad Sahu, Advocate.

For the Respondents : Mr.Shyam Sharma, G.A

Mr.R.S.Reisang, Sr.Adv, Mr.H.S.Paonam, Sr.Adv, Mr.Julius Riamei, Advocate & Mr.Y.Nirmolchand, Sr.Adv.

Date of Hearing : 28.02.2024

Date of Order : **31.07.2024**

JUDGEMENT&ORDER (CAV)

[1] The instant writ petition is filed praying for quashing/setting aside the three impugned orders all dated 13.04.2022 [Annexure A/7 (colly)], with consequent relief for quashing the related DPC proceedings held on 12.01.2022.

Brief facts leading to filing of the present writ petition is that vide order dated 16.03.2017 issued by the Commissioner (Works), Govt. of Manipur, the petitioner was promoted to the post of Assistant Engineer (Civil), Public Works Department, Manipur, w.e.f. 29.12.2016 from the post of Section Officer-I (Civil). It is stated that the Government of Manipur issued O.M. dated 10.09.2020 thereby ordering that the crucial date for determining the eligibility criteria for promotion of all posts under the State Government would be as per applicable Recruitment Rules of the said Service/Post. It was further included in the said memorandum that if the RRs are silent, the crucial date for the aforesaid purpose would be 1st April of the vacancy year with immediate effect. According to which, the crucial date for

promotion to the post of Executive Engineer (Civil) for the vacancy year 2019-2020 is 01.04.2020.

- [3] According to the Manipur Civil Engineering Service (PWD) Rules, 2016 published vide Notification dated 20.10.2016, the petitioner fulfilled the criteria for promotion to the post of Executive Engineer before the aforementioned crucial date for the vacancy year 2019-2020 as he possessed the requisite qualifying service of 17 years of regular service in the grade of Assistant Engineer/Section Officer Grade-I out of which at least 3 years of regular service has been in the grade of Assistant Engineer.
- In the proceedings of DPC dated 12.01.2022 conducted by the Manipur Public Service Commission for appointment by promotion to the post of Executive Engineer in the PWD (a copy of which was procured by the petitioner by way of an RTI application), there were 34 clear vacancies in the vacancy year 2019-2020 and the petitioner could have been promoted to the post of Executive Engineer in the said vacancy year of 2019-2020.
- [5] Pursuant to the said DPC and on the recommendation of the MPSC, three orders all dated 13.04.2022 were issued by the Secretariat, Works Department Government of Manipur thereby appointing the private respondents herein as Executive Engineers in the Works Department. In the said order, the names of 2014 direct appointee Assistant Engineers, who did not fulfil any of the eligibility criteria of possessing requisite minimum service as on the crucial date of 1.4.2020, have been included for the vacancy year 2019-2020. Such inclusion of

names of 2014 direct appointees and placing them above the promotion appointees even though they are ineligible for promotion for the vacancy year 2019-2020 deprived the petitioner of his fundamental rights of considering for promotion.

[6] In the affidavit-in-opposition filed by respondent No.4 [MPSC], it is stated that the direct appointee Assistant Engineers and other recommended officers in the DPC meeting held on 12.01.2022 are eligible for promotion in accordance with the relevant RRs prior to issuance of O.M. dated 10.09.2020. It is further stated that the case of the petitioner was considered in the DPC held on 12.01.2022 and findings in respect of the petitioner along with another officer were kept in sealed cover due to their involvement in criminal cases and therefore remained withheld awaiting the result of pending cases. Further, in reply to MPSC letter dated 22.08.2022, the Deputy Secretary (Works) in his letter dated 25.08.2022 stated that there is no vigilance case pending against the petitioner. Vide letter dated 26.08.2022, Under Secretary, MPSC informed the Deputy Secretary (Works) that the proceedings of the DPC with respect to the petitioner kept in sealed cover was opened and forwarded for doing needful. Thereafter, vide order dated 31.08.2022 issued by the Commissioner (Works), Govt. of Manipur, the petitioner was promoted to the post of Executive Engineer w.e.f 12.01.2022 (same as impugned orders where private respondents were also promoted) and his seniority was fixed above the officer shown at serial number 21.

[7] In the counter affidavit of respondent Nos. 1 & 3, it is specially stated that the petitioner was promoted to the post of Executive Engineer vide order dated

31.08.2022. His recommendation was kept in sealed covered due to his involvement in vigilance case FIR No. (8) 2019 V&AC and after the closure of criminal case, his sealed covered was considered and he was duly promoted to the post of Executive Engineer w.e.f 12.01.2022 retrospectively (along with the private respondents) and his seniority was placed above the serial No. 21 in the impugned order dated 13.04.2022. It is stated that the writ petition has become infructuous as the petitioner alternate prayer for promoting him to the post of Executive Engineer in the vacancy of the year 2019-20 has already been satisfied by the subsequent promotion order dated 31.08.2022 giving retrospective effect from 12.01.2022 (as done in the case of the private respondents herein). It is also stated that the other prayer for quashing the DPC proceedings has become infructuous as the petitioner had accepted his subsequent promotion order dated 31.08.2022. It is stated that the petitioner cannot challenge the recommendations of the DPC for promotion of private respondents while accepting the part of the same DPC recommending his promotion.

- On merit, it is stated that the relevant rules for deciding cut off date for considering the eligibility is as per the earlier O.M. dated 15.05.2014 which prescribed October 1st as the crucial date for consideration eligibility for promotion to the post of Executive Engineer.
- [9] Other private respondents (direct recruit Assistant Engineers) made the same pleas as the official respondents stating that the writ petition has become infructuous by the subsequent order dated 31.08.2022 promoting the petitioner to

the post of Executive Engineer giving retrospective effect as done in the case of private respondents. On merit, it is also averred that the direct recruit AEs were eligible for promotion as per the rules existing on the date of vacancy.

[10] Mr. Anjan Prasad Sahu, learned counsel for the petitioner submitted that the petitioner who was appointed to the post of Assistant Engineer (Civil), PWD w.e.f 29.12.2016 is eligible for considering for promotion to the post of Executive Engineer in terms of the failing clause to Schedule-III for the promotion to Executive Engineer and the portion of the Manipur Civil Engineering Service (PWD) Rules 2016 is reproduced as follows:

SI. No.	Name of the duty post and grade	Method of recruitment	Field of selection, minimum qualifying service and educational qualification for promotion
(1)	(2)	(3)	(4)
1	Executive Engineer/Survey or of works	By Promotion	Assistant Engineer/Assistant Surveyor of Works/Engineer Assistant with the following period of regular service in the grade:- (a) in the case of Degree holders, 6 years; (b) in the case of Diploma holders, 9 years; and (c) in the case of Diploma holders who have passed both Sections A&B of AMIE Examination of Institution of Engineers (India), 6 years from the date of passing the Examination or 7 years in the grade, whichever is shorter; Failing which, Assistant Engineer/Assistant Surveyor of Works/Engineer Assistant possessing at least Diploma in Civil Engineering with 17 years of regular service in the grades of Assistant Engineer and Section

	Officer Grade-I/Equivalent out of which at least 3 years of regular service shall be in the grade of Assistant Engineer.
	Assistant Liigineer.

[11] Mr. Anjan Prasad Sahu, learned counsel for the petitioner further submitted that for promotion to the Executive Engineer, an Assistant Engineer is to have minimum of (a) 6(six) years regular service for degree holders, (b) 9(nine) years for diploma holders, (c) 6-7 years for diploma holders who have passed AMIE Examination and filing which an Assistant Engineer with a combined regular service of 17(seventeen) years in the Grade of Assistant Engineering and Section Officer out of which 3(three) years regular service in the Grade of Assistant Engineer shall be eligible for promotion to the post of Executive Engineer. It is submitted that the petitioner who was promoted in the year 2016 to the post of Assistant Engineer has requisite 17(seventeen) years of regular service plus 3 years in the grade of AE. The petitioner herein was appointed to the post of Assistant Engineer (Civil), PWD Manipur w.e.f 29.12.2016 is eligible for promotion to the post of Executive Engineering under the failing clause as he has 17(seventeen) years combined service of Assistant Engineer and Section Officer out of which 3(three) years regular service in the Grade of Assistant Engineer. The petitioner was initially appointed as Section Officer Grade-I. The private respondents herein who were direct recruits in the post of Assistant Engineers on 08.09.2014 are not eligible for promotion against the vacancies arising in the year 2019-20 as they did not have the minimum 6(six) years regular service as on 01.04.2020 as per recruitment rules read with OMs

dated 21.04.2020 & 10.09.2020. It is stated that the direct recruits appointed on 08.09.2014 will complete 6(Six) years of qualifying service on 08.09.2020 and they will be qualified for promotion on 01.04.2021, the crucial date in terms of the O.M. dated 21.04.2020 and O.M. dated 10.09.2020. It is prayed that the promotion of the direct recruits Assistant Engineer to the post of Executive Engineer be set aside.

- [12] In order to support his case, Mr. Anjan Prasad Sahu, learned counsel for the petitioner relied upon the following decisions along with its relevant portions:
 - (a) 2022 Livelaw(SC) 553; Krishna Rai(Dead) through LRs & ors vs. Benaras Hindu University through Registrar & ors.
 - "22. Page No. 6 However, the Division Bench fell in error in applying the principle of estoppel that the appellants having appeared in the interview and being unsuccessful proceeded to challenge the same and on the ground alone, allowed the appeals, set aside the judgment of the Learned Single Judge. The Division bench having approved the reasoning of the Learned Single Judge, ought not to have interfered in the judgment of the Learned Single on a technical plea. The Division Bench ought to have considered that the appellants were Class IV employees working from 1977 onwards and expecting them to have raised serious objection or protest at the stage of interview and understanding the principles of changing the Rules of the game, was too far fetched, unreasonable and unwarranted.
 - **(b)** High Court of Chhattisgarh, Bilaspur(writ Petition(s)No.2969 of 2017)) Sanjeev Kumar Tiwari-Vs)-State of Chattisgarh & Ors.
 - "13. The review DPC can be held only if the DPC had not taken on material facts and consideration or if certain facts have not been brought to the notice of the DPC or if there have been grave errors in the proceedings of the DPC, review DPC should be convened also to rectify unintentional mistakes such as:-
 - "(b) where ineligible persons were considered by mistake;"

The writ petition is allowed. It is directed that respondent No. 1 shall conduct review DPC within two months from the date of receipt of copy of this order."

(c) Civil Appeal No.672 of 2019 arising out of SLP(c) No.26451 of 2014; Union of India & ors – Vs- Krishna Kumar & ors.

Promotion to be in accordance with the Rules as They Exist During its consideration: SC

"Para 7. The Supreme Court citing Deepak Agarwal Vs. State of Uttar Pradesh case had observed that "It had become a settled proposition of law that a candidate has the right to be considered in the light of the existing rules which implies 'rules in force' on the date the consideration took place.

"Page No. 9-10 "The High Court was, in our view, in error in postulating that vacancies which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed at the time of the occurrence of the vacancies".

(d) Civil Appeal No.883 of 2019(@SLP(C) No.492 of 2017)
Rajasthan State Sports Council & Anr. –Vs- Smt. Uma Dadhich & Anr.

The case is regarding promotion to the post of Sports Officer.

"Page 2. The earlier criterion for promotion to the post Sports Officer prior to the year 2006 was seniority. Thereafter, the criterion was altered to seniority-cum-merit and merit. The High Court proceeded on the basis that the criterion prevalent in 2006 could have been applied to prior vacancies."

"There is merit in the submission which has been urged on behalf of the appellants that the respondent had no vested right to promotion but only a right to be considered in accordance with the rules as they existed on the date when the case for promotion was taken up."

In view of the above facts and law points enumerated above the Writ Petition may kindly be allowed with exemplary cost." [13] Mr. Shyam Sharma, learned G.A submitted that by the present writ petition, the petitioner challenged the proceedings of the Departmental Promotion Committee and the impugned order dated 13.04.2022 (three orders), Annexure A/7 (colly) whereby 38(thirty eight) Assistant Engineers of PWD, Government of Manipur were promoted to the post of Executive Engineers by 3 (three) separate orders bearing the same date and also for direction to promote him to the post of Executive Engineer in terms of the crucial date of 01.04.2020 for the vacancy arising in the year 2019-20. Learned Government Advocate submits that the case of the petitioner was also considered by the DPC in its proceedings dated 12.01.2022 and in para 10 of the DPC proceedings, it is recorded that for the vacancies arising in the year 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20, officers of 2014 direct recruit and the promotes were eligible for consideration in the vacancy year 2019-20. The direct recruit officers of 2016 who were placed above the promotees were not considered as they were not eligible. The DPC recommended 32(thirty two) names against the clear vacancy and 6(six) names against the anticipated vacancies for promotion to the post of Executive Engineer. The cases of one Shri Soiminthang Singson and Shri Y. Munindro Mangang (the petitioner herein) were kept in sealed covered and in the circumstances, the name of the petitioner was not included in the impugned orders dated 13.04.2022 and he filed the present writ petition for quashing the impugned promotion orders as well as the DPC proceedings for promotion.

[14] Learned Government Advocate, Mr. Shyam Sharma has pointed out that after closer of the Vigilance case against the petitioner, the sealed cover was opened and he was promoted to the post of Executive Engineer vide order dated 31.08.2022 w.e.f. 12.01.2022 retrospectively (same as the private respondents who were recommended against the clear vacancies) and the seniority of the petitioner was placed just above the officer at serial No.21. It is stated that the petitioner has accepted his promotion and joined to the new office. Accordingly, it is submitted that the writ petition has become infructuous as the relief for his promotion to Executive Engineer has already been satisfied by the subsequent promotion order dated 31.08.2022 with retrospective effect and the prayer for quashing the impugned orders and the DPC proceedings does not survive. It is pointed out that the petitioner cannot question the DPC proceedings in which he was recommended for promotion and he has accepted the promotion. By the principle of approbate and reprobate, the petitioner cannot challenge the DPC proceedings once he has accepted the promotion. On merit, it is submitted that the crucial date as per the O.M. dated 15.05.2014 is 1st October in case the rule is silent. It is submitted that the Rule does not prescribe the crucial date. Hence, the relevant O.M. on the date of vacancy is the O.M. dated 15.05.2014 which prescribes crucial date is the 1st October and hence, the direct recruits who were appointed on 08.09.2014, completed the 6(Six) years of regular service as on 01.10.2020. Thus, they are eligible for consideration for promotion in the vacancy arising in the year 2019-20. It is submitted that the crucial date for considering promotion for vacancy in the year 2019-20 would not be 1st April 2021 as alleged by the petitioner. It is prayed that the writ petition may be dismissed as infructuous and also not maintainable.

[15] Mr. R.S. Reisang, learned senior counsel for MPSC submitted that the case of Shri Soiminthang Singson and Shri Y. Munindro Mangang (petitioner herein) was kept in sealed cover by the DPC due to Vigilance case. After closer of the Vigilance case against the petitioner, he was promoted to the post of Executive Engineer vide order dated 31.08.2022 w.e.f. 12.01.2022 as done in case of the private respondents. It is submitted that the main relief for the petitioner for his promotion has been satisfied by the subsequent order dated 31.08.2022 giving promotion with retrospective effect from 12.01.2022 as done in the case of the private respondents who were recommended against the clear vacancy. After acceptance of the promotion to the post of Executive Engineer, the main relief for the petitioner has become infructuous and he cannot challenge the DPC proceedings which recommended him for promotion to the post of Executive Engineer. It is prayed that the writ petition may be dismissed.

[16] Mr. Y. Nirmolchand, learned senior counsel for the private respondents who are promotee AEs, has submitted that the crucial date for direct recruit Assistant Engineers appointed on 08.09.20214 will be 1st April, 2021 as per the O.M. dated 21.4.2020 which prescribed the crucial date as 1st April and as such direct recruits Assistant Engineers appointed on 08.09.2014 will complete 6(six) years regular service on 08.09.2020 and they will eligible as per the crucial dated 01.04.2021 in terms of the O.M. of 2020. Learned senior counsel further submits

that the promotee Assistant Engineers who were promoted on 29.12.2016 will be eligible on 29.12.2019 as per the failing clause and hence, their crucial date will be on 01.04.2020. It is submitted that the promotion of the direct recruit Assistant Engineers was against the recruitment rules and the relevant O.M. of 2020.

Mr. H.S Paonam, learned senior counsel for respondent Nos. 7 and [17] 11 (who are some of the direct recruit Assistant Engineers appointed on 08.09.2014) has submitted that the some of the private respondents (promotee Assistant Engineers who are represented by Mr. Y. Nirmolchand, learned senior counsel) could not challenge the three promotion orders dated 13.04.2022 by which they were also promoted to the post of Executive Engineer. It is pointed out that the private respondents (Promotee Assistant Engineers) have not filed any writ petition challenging the impugned orders dated 13.04.2022 and DPC proceedings. They cannot challenge the promotion of the direct recruit Assistant Engineers to the post of Executive Engineer and they were also promoted by the same orders. Learned senior counsel further submits that writ petition has become infructuous after the appointment of the petitioner to the post of Executive Engineer vide order dated 31.08.2022 w.e.f. 12.01.2022 upon opening of sealed cover after his exoneration in the criminal case and the main prayer for his promotion to the post of Executive Engineer has been satisfied by this subsequent development i.e. orders dated 31.08.2022 giving the same date of retrospective promotion as done in the case of others. Hence, the petitioner has not suffered any disability or loss in the length of service. After acceptance of promotion to the post of Executive Engineer by the petitioner, the cause in the writ petition does not survive any longer and it is barred by the of principle of approbate and reprobate. It is submitted that it is the settled proposition of law that a person cannot partly challenge the impugned order and accept some part. It is urged that a writ petition may be dismissed on this ground alone.

On merit, Mr. HS Paonam, learned senior counsel for respondent Nos. 7 and 11 submitted that the crucial date as per OM dated 15.05.2014 is 1st October of the recruitment year. For vacancy arising in the year 2019-20, the crucial date for considering the eligibility will be 1st October in terms of the applicable OM dated 15.05.2014 on the date of vacancy.

The direct recruits Assistant Engineers who were appointed on 08.09.2014 are eligible on 08.09.2020 and as such they have completed 6(six) years of regular service on 01.10.2020 and hence they are eligible for promotion to the post of Executive Engineer. It is submitted that the crucial date of 1st April 2020 as per O.M. dated 10.09.2020 would not be applicable in case of the vacancies arising in the year 2019-20.

[20] Mr. H.S Paonam, learned senior counsel for the promotees further submitted that even if the O.M. of 2020 prescribing crucial date on 1st April is to be accepted for the sake of argument, the direct recruit Assistant Engineers will be eligible in terms of the Rules 7(iv) of Manipur Civil Engineering Service(PWD), Rules 2016 and the relevant portion is reproduced as under:

"(iv). where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less."

It is submitted that once the promotee Assistant Engineers who were junior to the direct recruit Assistant Engineers are considered eligible in terms of the failing clause, the senior direct recruit Assistant Engineer are to be considered in terms of the provisions of Sub-rule(iv) of Rule 7. Hence, if the argument of the petitioner that O.M. of 2020 which prescribed crucial date as 1st April is accepted, the direct recruit Assistant Engineers are also otherwise eligible for promotion to the post of Executive Engineer. It is submitted that the direct recruit Assistant Engineers are eligible both under the OMs of 2014 and 2020 notwithstanding the crucial date falls on 1st April or 1st October of the recruitment year.

[22] Mr. HS Paonam, learned senior counsel for respondent Nos.7 and 11 relied upon the decision of the Hon'ble Apex Court in the case of *Tajvir Singh Sodhi & Ors. Vs State of Jammu & Kashmir & ors(2023 SCC Online SC344)* on the question of the approbate and reprobate and the relevant portions are reproduced as follows:-

"29. It was averred that persons who participated in the selection process and interview cannot challenge the same upon being unsuccessful since they do not have a cause to challenge the same and a writ petition filed by them is not maintainable, vide Madan Lal; Anupal Singh v. State of Uttar Pradesh, (2020) 2 SCC 173; Sadananda Halo and Mohd. Mustafa. Reliance was also placed on D. Sarojakumari v. R. Helen Thilakom, (2017) 9 SCC 478. That in

- the present case, none of the writ petitioners was selected on merit and they were not even on the waiting list, therefore, the writ petitions filed by them were not maintainable on the ground of the same being devoid of any locus.
- *"*67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the vivavoce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the sustainability of candidates, namely, (i)that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.
- "69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

[23] Mr. Julius Riamei, learned counsel for respondent Nos. 5,6,9,10 and 12 submitted that direct recruits Assistant Engineers of 2014 batch are eligible as on 01.10.2020 in terms of the OM dated 15.04.2014 and he adopts the submissions of Mr. Shyam Sharma, learned G.A, and R.S. Reisang learned senior counsel for MPSC and Mr. H.S Paonam, learned senior counsel for some of the direct recruit Assistant Engineers and has opposed the submission of learned counsel for the petitioner as well as Mr. Y. Nirmolchand, learned senior counsel for some of the promotee Assistant Engineers. Mr. Julius Riamei learned counsel, has raised the points of maintainability of the writ petition and says that the writ petition is not maintainable and has become infructuous as the petitioner was promoted to the post of Executive Engineer during pendency of the writ petition vide order dated 31.08.2022 on the basis of the recommendation of the same DPC and he has accepted his promotion and his seniority was fixed by the said order. It is further clarified that the petitioner is also given promotion from the same date of effective, i.e, from 12.01.2022 as done in the other respondents who were recommended against the clear vacancy.

Mr. D Julius Riamei has also relied upon the recent judgement and order of the Hon'ble apex Court in the cases of *R.N.Gosain Vs.Yashpal Dhir* reported in (1992) 4 Supreme Court Cases 683 and State of Madhya Pradesh Vs. Srikant Chaphekar reported in (1992) Supreme Court Cases 689.

- [25] Mr. Anjan Prasad Sahu, learned counsel for the petitioner has rebutted the plea of the Mr. H.S. Paonam, learned senior counsel for the direct recruit Assistant Engineers to the fact that the recruitment rules applicable on the date of recruitment will be considered by the DPC and not the relevant Rules at the time of arising of the vacancy and it is clarified that OM of 2020 which prescribed crucial date of 1st April will be attracted in the present case as the DPC was conducted in the year 2022. Since the direct recruit Assistant Engineer did not have requisite 6(six) years regular service in the grade of Assistant Engineer as on 01.04.2020 they are not eligible for considering against the vacancies arising in the year 2019-20 in terms of the O.M. 19.09.2020. The O.M. dated 19.09.2020 also supersedes all others O.M. including the O.M. dated 15.05.2014. Hence, the direct recruit Assistant Engineers are not eligible for promotion against the vacancy arising in the year 2019-20. Reliance is placed in the recent decision of the Hon'ble Supreme Court in the case of State of Himachal Pradesh v. Raj Kumar: (2023) 3 SCC 773 holding the appointment is to be made as per the rules prevailing on the date of consideration.
- This Court has considered pleadings of the parties and the submission made at the bar and the relevant law in this regard for deciding the issue involved in the present writ petition, the following points of determination are framed by this Court.
 - (a) Whether a person can challenge a portion of the recommendations of the departmental proceedings after he has subsequently accepted the recommendation made by the DPC

for his promotion in terms of the principles of approbate and reprobate?

- (b) If so, whether the relevant rule for deciding crucial date of for promotion should be date of vacancy or date of recruitment?
- [27] From the record of the case, it is seen that the DPC meeting held on 12.01.2022 has considered the case of the petitioner as well as private respondents for promotion to the posts of Executive Engineer in PWD, Manipur.
- [28] As per relevant recruitment rules, it is 6(six) years of regular service in the grade of Assistant Engineer for degree holders, 9(nine) years for diploma holders, 6/7 years for AMIE certificate holders. In case none is available, by the failing clause, an Assistant Engineer who has a combined length of 17(seventeen) years of regular service in the grade of Assistant Engineers and Section Officer out of which 3(three) years regular service in the grade of Assistant Engineer is eligible for promotion to the post of Executive Engineer. As per of OM dated 15.05.2014, the crucial date for deciding the eligibility criteria is 1st October of the recruitment year and as per the O.M. dated 10.09.2020 it is 1st April of the recruitment years. For the vacancy arising in the year 2019-20, the DPC considered the O.M. dated 15.05.2014 and held that the direct recruit Assistant Engineers of 2014 and the promotee Assistant Engineers of 2016 batch were eligible for promotion in terms of the main rule i.e. 6(six) years regular service for direct recruit degree holders and failing clause of 17(seventeen) years for the promotee Assistant Engineers of 2016 batch. Accordingly, vide the three orders all dated 13.04.2022 and on the recommendation of the DPC, 38 (thirty-eight) Assistant Engineers were promoted

to the posts of Executive Engineer. Since the names of the petitioner and another were kept in seal covered by the DPC due to their involvement in criminal case and his name was not included in the list of promoted officers, the petitioner challenged the impugned orders dated 13.04.2022 along with the proceedings of the Departmental Promotion Committee on the ground that he was eligible and the direct recruit Assistant Engineers were not eligible for promotion to the post of Executive Engineer in terms of the office memorandum dated 10.09.2020 which prescribed 1st April as crucial date for considering herein the eligibility criteria. It is alleged that the direct recruit Assistant Engineers did not complete 6(six) years regular service as on 01.04.2020 as they were only appointed on 08.09.2014. However, after the closure of the criminal case against the petitioner, he was promoted to the post of Executive Engineer vide order dated 31.08.2022 giving retrospective effect from 12.01.2022 (as done in the case of other candidates recommended by the DPC against the clear vacancy) and the petitioner accepted the promotion. In spite of raising objection by the respondents of the maintainability of the writ petition by the subsequent event of his acceptance of the promotion to the post of Executive Engineer, the petitioner still insists that writ petition is still maintainable as the direct recruit Assistant Engineers were not eligible and cannot be promoted to the post of Executive Engineer.

[29] Learned Counsel for the respondents have raised the maintainability of the writ petition on the principle of approbate and reprobate to the effect that once

a person has participated in the selection process and accepted the result of the committee, he/she cannot challenge the departmental proceedings.

[30] On perusal of the case record, it is clear that the petitioner challenged the three impugned orders all dated 13.04.2022 by filing the present writ petition on 24.05.2022, as his name was not included in any of the three impugned promotion orders. The petitioner was perhaps under the assumption that he was not considered for promotion by the DPC and this is why the petitioner prayed in the petition in the prayer no. (iii) for issuing a writ in the nature of mandamus directing to appoint him and others on promotion to the post of Executive Engineers for the vacancy year 2019-2020 with all consequential benefits. Additionally, the petitioner also prayed for quashing the promotion orders of the private respondents. No reason is given in the prayer for quashing the promotion of promotee Assistant Engineers of 2016 batch (like the petitioner herein) who are other wise eligible under the 'failing clause'. At the time of the filing of the writ petition, the petitioner was not aware of the fact that his name was also recommended by the DPC, but kept under sealed cover due to his involvement in criminal case. Due to this lack of information, the writ petition was filed immediately. If the petitioner knew that he was also recommended by the DPC and his recommendation was kept under sealed cover, he would have made representation for opening the sealed cover. However, upon opening of the sealed cover after closure of criminal case, the petitioner was promoted to the post of Executive Engineer vide order dated 31.08.2022 during the pendency of the writ petition giving retrospective effect from 12.01.2022 as done in the case of private respondents recommended against clear vacancies. It is not in dispute that the petitioner has accepted his promotion to the post of Executive Engineer.

This Court is of the considered opinion that upon his acceptance of the promotion order dated 31.08.2022, the main relief for the petitioner for his promotion to the post of Executive Engineer has been satisfied. After his acceptance of the promotion order on the recommendations of the DPC, the petitioner can no longer agitate the writ petition for quashing the proceedings of the DPC recommending him and other private respondents for promotion to the posts of Executive Engineer. The same will be against the settled principle of approbate and reprobate.

- In the case of *Workmen v. Food Corpn. of India: (2023) 8 SCC 116*, Hon'ble Supreme Court held that a person cannot accept and reject the same thing. Para 16 is reproduced below:
 - **16.** In *Union of India* v. *N. Murugesan: (2022) 2 SCC 25*, this Court pointed out that the phrases "approbate" and "reprobate" mean that no party can be allowed to accept and reject the same thing, as the principle behind the doctrine of election is in-built in the concept of approbate and reprobate, that is, a person cannot be allowed to have the benefit of an instrument while questioning the same. It was noted that an element of fair play is in-built in this principle and it is a species of estoppel dealing with the conduct of a party.
- [33] In view of the settled principles law of approbate and reprobate, the petitioner upon his acceptance of the subsequent promotion to the post of the

Executive Engineer on the same recommendations of the DPC along with the case of other private respondents, he cannot agitate the writ petition challenging the recommendations of the DPC and promotion orders of the private respondents. Accordingly, the answer to the first issue is answered in negative. Since the first issue is decided against the petition, the second issue is not required to be dealt in the present petition.

[34] In the circumstances, the writ petition is dismissed as barred by the principles of approbate and reprobate. Parties are to bear their own costs.

JUDGE

FR/NFR

Priyojit/John Kom